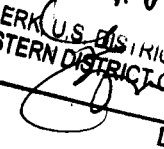


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RECEIVED

MAY 10 2019
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

Alfredo Holguin
Applicant
v
Lorie Davis, Director TDCJ
Respondent

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CIVIL ACTION NO:
3:17 – CV - 159

PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT
TO STAY AND HOLD IN ABEYANCE TO EXHAUST REMEDIES IN STATE COURT

Petitioner asks the Court to grant relief from the judgment as authorized by Federal Rule of Civil Procedure 60(b) and Rule 62 (b) (4).

INTRODUCTION

1. Petitioner is an inmate incarcerated in TDCJ-CID with a capital murder conviction.
2. On February 22, 2019 the 5th Circuit Court of Appeals denied Petitioner's COA because of failing to exhaust in State Court.

ARGUMENT

3. A party may seek relief from the judgment on a showing of mistake, inadvertence or surprise. Fed. R. Civ. P. 60 (b) 1, 6.
4. Petitioner is entitled to relief from the judgment if he is not otherwise entitled to relief under Rule 60 (b) (1) – (5) but exceptional circumstances exist that demonstrate the judgment is manifestly unjust. Fed. R. Civ. P. 60 (b) (6). *Liljeberg v Health Servs. Acquisition*, 486 U.S. 847, 863 (1988); *Thompson v Bell* 580 F3d 423, 442 (6th Cir 2009); *Cmry Dental Servs v. Tani* 282 F3d 1164, 1168 (9th Cir. 2002).

This judgment is manifestly unjust because Petitioner should be allowed to exhaust his claims of ineffective assistance of counsel from counsel failing to object to the admission of the photographic lineups that were done after a witness saw Petitioner, new evidence of DNA analysis report to shows that Petitioner was not associated with this offense, failed to inform the jury that witness saw photograph before lineup. Witnesses stated windows were dirty and unable to see inside of vehicle. The lineup used to identify Petitioner was suggestive.

PETITIONER'S REQUEST TO STAY PROCEEDINGS AND HOLD THE PETITION IN ABEYANCE WHILE PETITIONER EXHAUSTS THE ABOVE CLAIMS IN STATE COURT

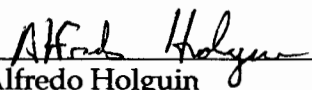
5. Petitioner's claims that were not exhausted are tolled under the limitations period during the pendency of a properly filed application for State post-conviction review. See 28 U.S.C. §2244 (d) (2) and *Rhines v Weber* 125 S.Ct. 1528 (2005). Under the Doctrine of Comity, this court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers and already cognizant of the litigation. Petitioner has good cause because the court officials withheld or failed to use a DNA – analysis that was favorable to Petitioner as to his presence at the crime scene.

CONCLUSION

6. Because Petitioner is actually innocent of the offense charged and proves he was not at the scene of the crime. For these reasons and in the interest of justice and fairness Petitioner asks the court to reopen this case and stay and hold in abeyance until the State Court review.

Dated: May 5, 2019

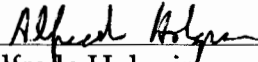
Respectfully,



Alfredo Holguin
3001 South Emily Drive.
Beeville, Texas 78102

CERTIFICATE OF CONFERENCE

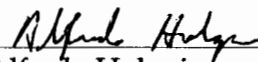
I do hereby certify that a conference is unlikely since plaintiff is incarcerated and such is not feasible.


Alfredo Holguin

VERIFICATION

I, Alfredo Holguin, TDCJ#1809852, being presently incarcerated in the McConnell Unit of the TDCJ-CID in Bee County, Texas, verify and declare under penalty of perjury that the foregoing statements are true and correct.

Executed on this, the 5th day of May, 2019.


Alfredo Holguin
TDCJ#1809852
3001 South Emily Drive
Beeville, Texas 78102

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing motion was sent via first class mail on this 5th day, May, 2019, addressed to:

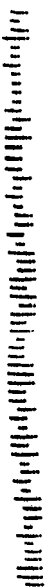
Jessica Manojlovich
P.O. Box 12548
Austin, Texas 78711-2548


Alfredo Holguin

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El Paso Division
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79901

79901-257830



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